**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0706 ST**
**SALES & USE TAX**
**FOR TAX PERIOD: 1998**

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## ISSUE

**I. Sales & Use Tax – Taxability of Aircraft**

**Authority**: IC 6-2.5-3-2; IC 6-2.5-3-6; South Carolina statute 12-36-2530; 45 I.A.C. 15-3-2; 45 I.A.C. 2.2-3-6; Tax Policy Directive #9

Taxpayer protests the imposition of use tax on the out-of-state purchase of an airplane in 1998.

## STATEMENT OF FACTS

Taxpayer is a Michigan corporation which purchased the aircraft at issue in 1998. Taxpayer bought and took delivery of the airplane in South Carolina. At the time of sale, taxpayer paid $300 to South Carolina. The $300 represents South Carolina's gross retail tax which is charged on all purchases made in South Carolina in the amount of 5% of the purchase price or $300, whichever is less. Taxpayer immediately moved the aircraft to Indiana and stored it in a hangar owned by the taxpayer. Taxpayer registered the aircraft in Indiana and paid the excise tax but claimed a sales/use tax exemption. The Department assessed the use tax based on the purchase price of the aircraft. Taxpayer protested the assessment. Additional relevant facts will be provided below, as necessary.

**I. Sales & Use Tax – Taxability of Aircraft**

## DISCUSSION

Pursuant to Indiana Code 6-2.5-3-2:

(a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.
(b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:
(1) is acquired in a transaction that is an isolated or occasional sale; and
(2) is required to be titled, licensed, or registered by this state for use in Indiana…

The Department made the assessment of use tax due based on the above-referenced code section. Taxpayer purchased an aircraft which was required to be registered in Indiana when it was located in Indiana. Pursuant to IC 6-2.5-3-6, the Department finds the taxpayer was responsible for the use tax.

> Notwithstanding subsection (c), a person liable for the use tax imposed in respect to a vehicle, watercraft, or aircraft under section 2(b) of this chapter shall pay the tax:
> (1) to the titling agency when the person applies for a title for the vehicle or the watercraft; or
> (2) to the registering agency when the person registers the aircraft;
> unless the person presents proof to the agency that the use tax or state gross retail tax has already been paid with respect to the purchase of the vehicle, watercraft, or aircraft or proof that the taxes are inapplicable because of an exemption under this article. IC 6-2.5-3-6(d).

Taxpayer protests the assessment of use tax and argues it paid sales tax in South Carolina upon the purchase of the aircraft. Taxpayer contends payment of the South Carolina tax exempts it from payment of Indiana use tax per IC 6-2.5-3-6(d) cited above.

Taxpayer points to South Carolina statute 12-36-2530 which states, "[w]here pursuant to a retail sale, the tangible personal property is delivered in this State to the buyer or to an agent of the buyer other than a carrier, the retail sales tax applies notwithstanding that the buyer may transport subsequently the property out of the State." Taxpayer argues payment of the tax to South Carolina was not voluntary but required by South Carolina law. As such, taxpayer argues it has an exemption from Indiana use tax.

The Department does not agree. Pursuant to Indiana Code 6-2.5-3-2, the taxpayer owed use tax on the purchase of the aircraft. Pursuant to IC 6-2.5-3-6(d), taxpayer must pay the use tax unless it is proven the Indiana sales/use tax has already been paid. The Department does not find a payment of $300 to South Carolina to be sufficient to provide an exemption. Any double taxation or commerce clause claim brought by the taxpayer will not be addressed at this level. The Department of Revenue

is not the proper forum to hear constitutional arguments.

Taxpayer chose to take delivery in South Carolina where there is a minimal sales tax on big-ticket items such as aircraft. The Departments finds the taxpayer intentionally acted to avoid the substantial Indiana sales/use tax. Because the aircraft was immediately transferred to Indiana upon the purchase and because the aircraft is located and operated in Indiana, the Department finds taxpayer owes use tax.

Taxpayer alternatively claims it does not owe the use tax because it has protested the same issue before and relied on the Department's ruling in a prior Letter of Findings. The taxpayer purchased its first aircraft in 1990. After paying the tax in South Carolina and transporting the aircraft to Indiana, the Department assessed the use tax. In the Letter of Findings, the Department sustained the taxpayer's protest. The Department ruled that sales tax was paid to South Carolina when the registration was complete of the aircraft and the tax imposed by IC 6-2.5-3-2 was inappropriate.

Pursuant to Department Regulation 45 I.A.C. 15-3-2(d)(3), "Letter of findings that are issued by the department, as a result of protested assessments, are to be considered rulings of the department as applied to the particular facts protested."

Tax Policy Directive #9 (July 1995) states a ruling becomes automatically null and void after December 31 of the sixth ($6^{th}$) year after the year in which the ruling is issued. However, a ruling may also become null and void prior to the end of the sixth year with the revocation being applied retroactively under the appropriate circumstances. Those circumstances include a mistake in the correct interpretation of the law.

> Generally, department publications may be relied on by any taxpayer if their fact situation does not vary substantially from those facts upon which the department based its publication. If a taxpayer relies on a publicized ruling and the department discovers, upon examination, that the fact situation of the particular taxpayer is different in any material respect from that situation on which the original ruling was issued, the ruling will afford the taxpayer no protection… 45 I.A.C. 15-3-2(d)(3).

The Department declines to apply the original LOF to this protest. First, the Department finds the facts differ substantially from the facts presented to the Department during the initial protest. Although the Letter of Findings does not give a detailed statement of facts it is clear from Department records that different facts were considered. In the first protest, the aircraft at issue had been registered and located in South Carolina for an extended period of time following the purchase. The Department found the circumstances in the original protest required no use tax be assessed.

In this protest, the aircraft was immediately transported to Indiana upon its purchase. There was no registration or long-term storage in South Carolina. Taxpayer paid $300 to the State of South Carolina but immediately removed the aircraft and registered it in Indiana. Given these

circumstances, the Department finds the taxpayer does owe use tax and the prior LOF is not binding.

Alternatively, the Department finds the prior LOF to have made a mistake in the correct interpretation of the law. As such, the Department retroactively revokes the Letter of Findings pursuant to Department Regulation 45 I.A.C. 15-3-2(d)(3). Part of the LOF finding states, "The Department finds that the taxpayer fully complied with the laws of South Carolina and that no Indiana use tax is due." That statement may be read to mean simply complying with the laws of another state demands that no sales or use tax will be assessed in Indiana. That is not correct. Taxpayer has complied with the laws of South Carolina every time an aircraft has been purchased in that state. However, taxpayer has not complied with the laws of Indiana when it failed to pay use tax on the aircraft purchase made in 1998.

Finally, the taxpayer argues a deduction for the value of the trade-in should be made before assessing the use tax on the new purchase. Department Regulation 45 I.A.C. 2.2-3-6(e) provides, "only the trade-in value of an aircraft for another aircraft, or the trade-in value of a watercraft for another watercraft, may be deducted from the selling price for sales tax purposes." The use tax assessment should have provided the trade-in value deduction accordingly.

## FINDING

Taxpayer's protest is denied in part and sustained in part. Taxpayer owes the use tax on the purchase of the aircraft. However, the use tax assessment will be adjusted to provide for the trade-in value deduction pursuant to verification by the Department.